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Annual Report

Indiana State Ethics Commission

2004

Mission

To promote the ethical conduct of state officers and employees in the executive and administrative branch of state government. The Commission achieves its mission through:

- administering a program of education and training
- proposing legislation to the General Assembly
- adopting rules relating to conduct and ethics
- issuing advisory opinions
- enforcing statutes and rules, and
- evaluating and improving its operations and services.

By administering the Code of Ethics for the Conduct of State Business, the Commission itself receives complaints, initiates investigations, holds public hearings, decides if ethics violations have occurred, and recommends or imposes appropriate sanctions.

The current enabling statute is found at [IC 4-2-6](#), as amended in 2001. Most of the substantive rules are found at [40 IAC 2](#), effective November 21, 1991.

Commission Members



David Hadley, Chairperson of the Political Science Department at Wabash College, was appointed Chairperson of the Commission by Governor Joe Kernan. Hadley first joined the Commission in 1992 and served as chairperson from 1994 until his resignation in November 1997. He was later appointed by Governor Frank O'Bannon to a four year term, which expires

September 1, 2006. Hadley is a graduate of Indiana University with a B.A. degree in journalism. He holds a M.A. and Ph.D. from Indiana University in Political Science.



James Williams was appointed to the State Ethics Commission in February 2001 by Governor Frank O'Bannon. Mr. Williams received his B.A. in Economics from Indiana University, Bloomington, in 1964 and his J.D. from the University of Chicago in 1967.

Mr. Williams is an attorney with Middleton & Reutlinger, which has offices in Jeffersonville and Louisville. Mr. Williams serves on the boards of the Clark County Public Defender, the District 14 Pro Bono Program, and the New Hope Services, Inc.



James N. Clevenger, Kizer & Neu, LLP, of Plymouth, Indiana, was appointed by Governor Joe Kernan September 1, 2004, to a four-year term on the Ethics Commission. Mr. Clevenger received his B.A. from Hanover College and his J.D. from Indiana University. He is presently the County Attorney for Marshall County and has served as past Town Attorney for Walkerton and Culver Counties. Mr. Clevenger has represented

several area school corporations and business clients in Marshall County.

Mr. Clevenger currently sits on the boards of St. Joseph Hospital Development Committee for Marshall County Campus and Plymouth Civic Improvement Commission (Vice Chairperson). He is the past president of Plymouth Chamber of Commerce; the Marshall-Starke Development Center; and Marshall County United Way.

Mr. Clevenger is a member of the American Bar Association; Indiana State Bar Association; Indiana Trial Lawyers Association; Marshall County Bar Association; and First Presbyterian Church of Plymouth.



Thomas John Brunner, Jr., a partner with Baker & Daniels Law Firm in South Bend, was appointed by Governor Joe Kernan on June 8, 2004, to a four-year term on the Ethics Commission. His term expires September 2008. Mr. Brunner is a former member of the Indiana Supreme Court Disciplinary Commission and received his B.A. and J.D. degrees from the University of Notre Dame.



Priscilla Diane Keith, General Counsel, Health and Hospital Corporation, Indianapolis was appointed by Governor Joe Kernan on June 8, 2004, to a four-year term on the Ethics Commission. Her term expires September 2008.

Staff

Timothy J. McClure, Director . . . is responsible for all agency administrative, legislative and legal activity, plus the supervision of staff.

Nina Brahm, Attorney . . . advises the Director and the Commission on legal issues, and assists in the administration of the agency. The attorney also responds to questions on the state ethics code from state employees, officers and the general public.

David A. Clark, Investigator . . . performs fact-finding on all complaints, investigates all complaints and cases initiated by the Commission on its own or upon request of the Governor. The Investigator also audits Financial Disclosure Statements.

Mary C. Hill, Information Director . . . provides information services and administers a program of training for all employees of the executive branch.

Joann Flynn, Business Administrator . . . handles all correspondence, word processing, filing, purchasing, personnel matters, and maintains the Index of Conflict of Interest Statements. She is also responsible for financial accounting and for preparing the annual budget.

Budget

FY 2003 - 2004

Appropriation \$276,481

Actual Expenditure \$275,360

Cost of Commission per:

-capita (based on state population of 5,544,159) = \$.0004

-state employee (based on 38,000 state employees) = \$.07

Ethics Training

Ethics training reaches employees at every level of state government. New employees receive ethics orientation by viewing a fifteen-minute video, *Ethics Rules for State Employees*, and receiving an ethics booklet, *Indiana State Ethics Laws*.

Supervisors and managers may participate in a class ([*Ethics for Supervisors and Managers*](#)) that establishes guidelines for handling ethics situations in the work place.

Agency heads, state officers, and ethics officers may choose between attending [*Ethics for Executives*](#), or receiving individual training from a member of the Commission staff.

All the above classes are online so that employees may take the classes at their work stations.

In addition to the regularly scheduled ethics classes, agencies and offices may request training sessions for their employees. In 2004, employees from 17 agencies and one state office received training specific to their agencies.

Training by State Offices & Agencies

In addition to the quarterly ethics classes offered by the State Ethics Commission, agencies and state offices are requested to provide orientation for new employees and refresher training. Agencies and offices file reports of their training activity with the Commission on a quarterly basis. These quarterly reports reflect the number of new employees receiving orientation training from their agencies.

The total number of employees reported trained by their agencies during 2004 was 1,375. The reported number of employees hired in 2004 was 1,359. Added to the 1,979 employees trained by the State Ethics Commission plus the 10,071 employees taking the online training, the total reached 13,425.

Post-Employment Training

As employees leave government service, they are given the post-employment guide, *Leaving State Government*, by their human resources representative or designated person. The guide consists of laws that apply specifically to former state officers and employees of the executive and administrative branch of state government. At the end of the year, each agency and office is asked to report the number of employees who left state government and the number of those employees who received the guide. In 2004, 457 employees were reported to have left state government and 453 of those were able to receive the guide.

Public Information

Documents Available for Viewing & Copying: The State Ethics Commission maintains various filings (see Public Documents below) for public inspection. All of these filings are available in the Commission's office during normal business hours (8:00 a.m. to 4:30 p.m.) on regular state working days.

The Commission also maintains files of minutes of its meetings, records of cases that go to public hearing (or where a settlement occurred after a finding of probable cause), and reports for cases in which an agreed settlement was reached.

In 2003, 490 Financial Disclosures and in 2004, 123 Gift and Travel approvals were filed. The number of Conflict of Interest filings indexed was 2,874 (these were filings statewide as per IC 35-44-1-3). As always, the office responded to numerous phone calls, letters, and visits for guidance and information on ethics as well as meeting with people who dropped in for assistance.

Public Documents

Financial disclosure statements: required of state officers, candidates for state offices, executive branch agency heads, and certain other state employees.

Notices of recusal: due to conflicts or potential conflicts of interest.

Waivers: of the post-employment restriction.

Approvals: to accept certain gifts or travel-related reimbursements.

Index of filings: under the criminal conflict of interest law (original disclosures filed with the State Board of Accounts).

Reports of contributions and expenses to: Governor's Public

Building Foundation and Governor's Residence Commission.

Code of Ethics

The Code of Ethics for the Conduct of State Business is the legal floor of minimum standards to which employees in the executive and administrative branch of state government must adhere. The code states what employees may and may not do.

Publications

The [2003 Annual Report](#) was added to the list of publications available on the Commission's web site. Hard copies of these publications (statutes, rules, and one-page guides) are available to the public and state employees. The newsletter, [Ethics News](#), is issued every other month and is available as a PDF file on the Internet.

A.D.A.

In compliance with the Americans With Disabilities Act (A.D.A.), the Commission's training videos are closed captioned and the ethics booklets: Indiana Code of Ethics for the Conduct of State Business, and Indiana Ethics: A Guide to the Ethics Laws, are available in braille.

Investigations

Procedure

Ethics laws (IC 4-2-6) authorize the Commission to initiate and conduct an investigation into an alleged violation upon its own initiative or upon the written request of the Governor. In addition, the Commission may receive sworn complaints of alleged ethics violations. If a complaint is not dismissed for failing to allege facts sufficient to constitute a code or statutory violation, or for being frivolous or inconsequential, the Commission investigates the complaint.

Alternatively, a complaint may be forwarded to a more appropriate authority or person for investigation. If a complaint is not dismissed or forwarded, the respondent(s) must be notified promptly that a complaint has been filed.

After the Commission conducts an investigation, it determines if there is probable cause to support an alleged violation. If the Commission does not find probable cause, the complaint is dismissed and the person who filed the complaint and the respondent are notified. In such a situation, all information received by the Commission in its investigation remains confidential unless the respondent waives the right to confidentiality and elects to have the records divulged.

If the Commission determines there is probable cause of a violation, the respondent must be notified and a public hearing must be set within sixty days of the determination. The respondent may enter into a settlement concerning the facts and sanction, if the Commission agrees.

After the public hearing or acceptance of an agreed settlement, the Commission must issue a report stating its findings of fact and recommending or imposing sanctions. The Commission may recommend the appointing authority to reprimand, suspend, or dismiss the employee or the Commission may directly impose sanctions of a civil penalty, cancel a contract, or bar a person from contracting with an agency of state government.

The report of the Commission must be sent to the employee, the appointing authority of the employee, and the Governor. The Commission may also forward the report to the prosecuting attorney of a county in which the violation occurred, the State Board of Accounts, the state personnel director, the attorney general, a state officer, or any other appropriate person. The report is available for public inspection and copying.

Case Summaries

During 2004, the State Ethics Commission initiated 23 new cases and resolved 5 cases through agreed settlements.

In 8 investigations initiated in 2004, the Commission found no probable cause and dismissed the cases. One of the cases was resolved through an agreed settlement and 14 were pending as of the beginning of 2004.

Issues Examined in 2003 Cases

Conflict of Interest	8
Misuse of State Resources/Time	2
Gifts/Favors	15
Moonlighting	2

Penalties Levied in 2004

- Civil penalties assessed, \$10,850.00
- Amount reimbursed to state, \$10,850.00

Who Files?

One of the Commission's principal responsibilities is to administer the financial disclosure provisions of the statute. Persons required to file a financial disclosure report are: state officers, candidates for state office, chief executives of agencies in the executive branch of state government, the director of each division of the Department of Administration and purchasing agents within the Procurement Division of the Department of Administration. The report may be filed online no later than February 1 for the previous calendar year or within sixty days of being employed or within thirty days of leaving employment. The person filing must affirm to the statement under the penalty of perjury and may file an amended statement upon discovery of additional required information.

Contents

The following information is required in the report:

- (1) The name and address of any person known: (A) to have a business relationship with an agency, and (B) from whom the state officer, candidate, or employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).
- (2) The location of all real property in which the state officer, candidate, or the employee, or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth, or the net worth of that individual's spouse or unemancipated children.
- (3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse. The state need not be listed as an employer.
- (4) The name of any sole proprietorship owned or professional practice operated by the state officer, candidate, or employee or that individual's spouse and the nature of the business.
- (5) The name of any partnership of which the state officer, candidate or the employee, or that individual's spouse is a member and the nature of the partnership's business.
- (6) The name of any corporation (other than a church) in which the state officer, candidate, or the employee or that individual's spouse is an officer or director and the nature of the corporation's business.
- (7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000).
- (8) The name and address of the most recent former employer.

Audits

The Investigator performs a desk audit on all reports making sure all forms are complete and filled out according to the given instructions. The Investigator also looks for information suggesting a conflict of interest or other impropriety. In 2003, there were no forms revealing information which led to a Commission-initiated investigation. All forms are maintained for public inspection.

Advisory Opinions

The State Ethics Commission is directed by statute to issue Advisory Opinions interpreting IC 4-2-6, 40 IAC 2, and any other statute or rule governing official conduct. [Advisory Opinions](#) are issued upon request or by the Commission's own motion.

If an Advisory Opinion is requested, an "inquiry" (written request) must be filed with the Commission at least seven days prior to a Commission meeting.

The person submitting the inquiry must appear before the Commission at a monthly or special meeting and attest to the facts of their situation under affirmation of the penalty of perjury.

An Advisory Opinion is binding on the Commission in any subsequent allegations concerning the person who requested the opinion and who acted on it in good faith. The opinion is also a public record. Employees are encouraged to ask their agency head, ethics officer, or supervisor for guidance about any situation which they feel might involve an ethics violation. In addition, employees may call the Commission's attorney and director for informal guidance. In 2004, 430 informal opinions were issued.

Executive Orders

On April 27, 2004 Governor Joe Kernan announced several changes to Indiana State Government ethics policies. Through executive order, these changes went into effect July 5, 2004. You may view the executive orders by clicking here: [View Executive Orders](#).

Public Office is a public trust . . .

Therefore, employees of state government must conduct themselves in such a manner that the general public will have confidence that their performance is always for the public good. The following statements are minimum standards of conduct for state employees to follow.

- Employees are to be impartial in the discharge of their duties.
- Decisions and policies must not be made outside the proper channels of state government.

- Public office is not to be used for private gain.
- Employees may not make unapproved use of state property, personnel, or facilities.
- Employees may not use state time for other than state duties.
- Employees may not benefit financially from information of a confidential nature gained through state employment.
- Employees may not solicit or accept outside payments for the performance of state duties.
- An employee may not accept a gift, favor, service, entertainment, food or drink which could influence the employee's action.
- Payment for an appearance, speech, or article may not be accepted if the appearance, speech, or article could be considered part of the employee's official duties.
- An employee may not accept payment of expenses for travel, conventions, conferences, or similar activities which could influence the employee's action.
- Employees may not have outside employment incompatible with their state employment or against their agency's rules.
- Supervisors may not solicit political contributions from employees they supervise.
- An employee may not solicit political contributions from persons or entities that have a business relationship with the employee's agency.
- Employees may not participate in decisions or votes of any kind in which the employees, their spouses, or dependent children have a financial interest.
- After leaving state government, former employees may not financially benefit from a contract they negotiated, prepared, or approved for one year.
- Former employees may not assist a person regarding a particular matter in which they participated as part of their state duties for one year after they had that responsibility.

“It is the spirit and not the form of law that keeps justice alive.”

— Earl Warren
US jurist & politician (1891 - 1974)